FARAD CONTINUATION SHEET NO.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
NAGPUR BENCH, NAGPUR

Second Appeal No. 268/2004
(Janrao Ganpatrao Zoting Vs. Shankarrao Ganpatrao Zoting)

Appeal	District :
Application No.	of 200
Writ petition	

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's orders

Mr. A.M. Ghare, Adv. for the appellant.

CORAM : Smt. Vasanti A. Naik, J.
DATED : 20th September, 2007.

Heard Shri Ghare for the appellant.

The appellant is the original defendant. A suit was filed by the plaintiff for partition and separate possession of the suit properties mentioned in the schedule attached to the plaint. According to the plaintiff, the suit properties were the joint family properties and since the defendant was not ready and willing to hand over possession of his share in the property, the suit was instituted. The defendant denied the claim of the plaintiff. The defendant pleaded that there is one more field property which was taken by the father of the parties on lease under the Bombay Tenancy and Agricultural Lands (Vidarbha Region) Act. The defendant further pleaded that there was one more house property purchased in the named of the plaintiff, but the said property was purchased from

the income derived from the other joint family properties and, therefore, it was necessary for the plaintiff to have included the field property and the house property, in the suit properties. The defendant sought for the dismissal of the suit for not including the aforesaid properties. However, in the counter claim filed by the defendant, the defendant prayed that the house property and the field property, which was not included in the suit properties, should also be included in the suit property. The plaintiff filed written statement to the Counter Claim, and denied that the father of the parties was a tenant in the field property. It was pleaded by the plaintiff in the written statement to the counter claim, that the plaintiff was the owner of the field property. It was not the father of the parties, but it was the plaintiff who was the tenant in the field property. He further pleaded that the Tenancy Court had also issued the Sale Certificate in favour of the plaintiff alone. He pleaded that the house property mentioned in the counter claim was also purchased by the plaintiff himself and was, therefore, his self-acquired property. He, therefore, prayed for the dismissal of the counter claim.

On the aforesaid pleadings of the parties, the trial Court framed the issues and after considering the material evidence tendered by the parties on record, came to a conclusion that the

house property mentioned in the counter claim, was the self acquired property of the plaintiff. The plaintiff had proved that he was the lessee of the field property under the provisions of the Bombay Tenancy Act. The trial Court further held that the plaintiff proved that he had half share in the suit property mentioned in the schedule attached to the plaint. The Court consequently decreed the suit for partition and separate possession. The appeal filed by the defendant against the judgment and decree passed by the trial Court dismissing the counter claim, was also dismissed by the first appellate Court.

The findings recorded by both the Courts are pure findings of facts and do not give rise to any substantial question of law. The ratio laid down in the judgment reported in **AIR 1995 SC page 895** and specifically paragraph no.4 thereof, on which a reliance is placed by the counsel for the appellant, is not applicable to the facts of the case.

In the absence of any substantial question of law, the second appeal is dismissed with no order as to costs.

JUDGE

RMP